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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 39

JAMES MONROE, ET AL.,

Petitioners,

vs.

FRANK PAPE, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

REPLY BRIEF FOR PETITIONERS

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PETITIONERS' REPLY BRIEF.

ARGUMENT.

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1. THE "COLOR OF LAW" ISSUE.

For the first time since this case was filed in the District Court below, respondents have raised the contention that their acts were not committed "under color of any statute, ordinance, [or] regulation . . . of any State" within the meaning of R.S. § 1979. (Respondents' Brief, p. 4.) Respondents argue that Deputy Chief of Detectives Pape and, by implication, his twelve Detective Bureau subordinates "occupied the status of a private tortfeasor" (Brief, p. 7) when they burst into the Monroe home, ran-

sacked the premises, arrested James Monroe, took him to the Central Police Headquarters of the Chicago Police Department and held him there for interrogation and lineup exhibition for ten hours.

It is, of course, uncontroverted that the police officers were *on duty* at the time they did these acts. (R. 1-2.) It is nowhere intimated in the record or the briefs that respondents were off on a frolic of their own, or that for some private, personal reason they were feuding with the Monroe family. It is crystal clear that these respondents were detectives employed by the City of Chicago to make investigations and arrests and that this is precisely what they were doing in this instance. With commendable candor, respondents have set forth in their brief the municipal ordinances "under color" of which they acted. (Brief, pp. 5-6; Municipal Code of Chicago, §§ 11-24, 11-25.)

Despite these facts, respondents suggest that (1) the acts of the police in this case were not "state action" for Fourteenth Amendment purposes, and (2) they were not acts done "under color of law" within the meaning of the Civil Rights Act. In each instance, respondents' theory seems to be that unless there exists "a law of the state or city authorizing such misconduct" then no Federal violation has occurred. (Brief, p. 7.)

The Fourteenth Amendment "state action" aspect of respondents' argument was rejected eighty years ago by *Ex Parte Virginia*, 100 U.S. 339, 347 (1880).

The Civil Rights Act "color of law" aspect of respondents' argument was rejected twenty years ago in *United States* v. *Classic*, 313 U.S. 299, 326 (1941). It was rejected again in *Screws* v. *United States*, 325 U.S. 91, 107-108, 109-10 (1945) after exhaustive analysis and debate. It

was rejected again in *Williams* v. *United States*, 341 U.S. 97, 99-100 (1951) where this Court reaffirmed the doctrine of *Screws*, upon being urged to overrule it.

The wrongful acts committed by the State officers in *Classic*, *Screws*, and *Williams* were, in each instance, clear violations of the laws of Louisiana, Georgia and Florida, respectively. Yet in each instance this Court held that these wrongful acts were done "under color of law," because:

> "In each officers of the State were performing official duties; in each the power which they were authorized to exercise was misused."
>
> *Screws* v. *United States*, 325 U.S. 91, 110 (1945).

It is clear that officers of the Detective Bureau have the officially imposed duty and responsibility of making criminal investigations and arrests, of searching for evidence of crime, and of interrogating witnesses and suspects about criminal offenses. When their acknowledged powers are abused in the course of their performance of these official duties, then they have acted "under color of law" within the meaning of R.S. § 1979, of *Classic*, of *Screws*, and of *Williams*.

Respondents have pointed to nothing which has occurred in the past decade which casts doubt on the wisdom of this Court's decisions in *Screws* and *Williams*. Respondents advance no policy arguments whatsoever in support of their plea for repudiation of these cases. But there are significant reasons of policy why this Court should adhere to and reaffirm *Screws* and *Williams*.

First: The "color of law" holdings in *Screws* and *Williams* were matters of statutory construction. Had Congress disagreed with these holdings it could have amended the statute. Indeed, the *Screws* majority actually invited

Congress to do so, if it disagreed with the *Screws* holding:

> "We are not dealing with constitutional interpretations which throughout the history of the Court have wisely remained flexible and subject to frequent reexamination. The meaning which the Classic Case gave to the phrase 'under color of any law' involved only a construction of the statute. *Hence if it states a rule undesirable in its consequences, Congress can change it.*" (Emphasis supplied.)
>
> *Screws* v. *United States*, 325 U.S. 91, 112-13 (1945).

Congress did not change it. The extensive Civil Rights Act revisions of 1957 and 1959 left the "color of law" phraseology of R.S. § 1979 and 18 U.S.C. § 242 untouched. What was true in 1945 when *Screws* was decided is even more true today:

> "We add only to the instability and uncertainty of the law if we revise the meaning of [the Act] to meet the exigencies of each case coming before us."
>
> *Screws* v. *United States*, 325 U.S. 91, 113 (1945).

Second: A substantial portion of the work of the Civil Rights Division of the Justice Department will have to be abandoned if *Screws* and *Williams* are repudiated. If these decisions are overruled on the "color of law" point, enforcement of the criminal as well as the civil sanctions of the Act will be stopped in its tracks in many instances. The Justice Department's generation-old policy, inaugurated under Attorney General Frank Murphy, of criminal prosecutions in selected instances of particularly brutal police misconduct will be doomed, because the "color of law" holding here must control the meaning of the similar phrase in 18 U.S.C. § 242—the statute which is the basis of the Justice Department program in the

civil liberties area. Cases such as the recent *Pool* v. *United States*, 260 F.2d 57 (9th Cir. 1958) would be impossible. An important Federal law enforcement program would be completely disrupted.

2. THE OTHER ISSUES RAISED BY RESPONDENTS.

The remaining points raised by respondents were anticipated in petitioners' opening brief. It is, however, worthy of note that in their entire brief, respondents have not advanced a single policy argument in support of their various positions, with the exception of the following incredible paragraph (Brief, p. 27):

> "Such municipal liability would also encourage unlawful police conduct because the victim of such conduct would not seek to hold the policeman liable but the municipality. It would encourage collusion between individuals and the police to the financial detriment of the municipality. Venal policemen would be encouraged to commit unlawful acts knowing suit would be filed against the municipality instead of them."

We cannot believe that this contention is serious. It is, to us, inconceivable that any significant number of police officers, even in Chicago, would collude with unscrupulous would-be plaintiffs to "frame-up" constitutional violations, air the faked abuse in a District Court of The United States, procure a judgment based on perjured testimony, and later divide the swag.

3. NEW MATTERS.

1. Since the filing of petitioners' opening brief, the Federal Reporter advance sheet for October 31, 1960 has been published. It contains the report of *Cohen* v. *Cahill*,

281 F.2d 879 (9th Cir. 1960), in which, on facts similar to those at bar, the Ninth Circuit said (p. 880):

> "Clearly, the allegations of the complaint . . . state a cause of action cognizable by the District Court under [R.S. § 1979]."

• • •

2. At pages 60-61 of our opening brief, we summarized the responses of the attorneys for 19 cities to inquiries concerning the number of civil suits filed against police officers of their cities during the past twelve months. We have since received additional responses from the cities of Buffalo, New York; Honolulu, Hawaii; Minneapolis, Minnesota; and Seattle, Washington. These responses have been lodged with the Clerk of this Court. Copies have been served upon counsel for respondents. The total responses to date are summarized in the following table. Cities from which no responses have been obtained are listed in the table but, of course, no information concerning them is included in the "Suits Filed" column.

City	*Suits Filed Within Past Twelve Months*
Atlanta, Ga.	
Baltimore, Md.	
Birmingham, Ala.	
Boston, Mass.	
Buffalo, N.Y.	7 suits in 1959; 9 suits in 1960 to July 1 ("a marked increase.")
Charleston, S.C.	
Charlotte, N.C.	1 suit within ". . . past several years."
Cincinnati, Ohio	1 suit in 1959.
Cleveland, Ohio	
Columbus, Ohio	2 suits. (". . . average. . . .")
Dallas, Texas	
Denver, Colo.	2 suits. (". . . this type of situation is not a problem.")
Des Moines, Ia.	
Hartford, Conn.	"Seven suits presently pending."
Honolulu, Ha.	3 new suits during past 12 months. (". . . about average. . . .")
Houston, Texas	
Indianapolis, Ind.	
Jackson, Miss.	
Jacksonville, Fla.	
Jersey City, N.J.	
Kansas City, Mo.	"No suits filed."
Los Angeles, Cal.	
Memphis, Tenn.	
Miami, Fla.	

Milwaukee, Wisconsin	9 cases 58-59 fiscal year. 9 cases 59-60 fiscal year.
Minneapolis, Minn.	3 suits pending; 1 suit filed within past 12 months (". . . rather a rarity in our jurisdiction. . . .")
Mobile, Ala.	
Montgomery, Ala.	
New Bedford, Mass.	
New Orleans, La.	
New York, N.Y.	
Newark, N.J.	
Oklahoma City, Okla.	1 suit.
Omaha, Neb.	1 suit (". . . very few. . . .")
Philadelphia, Pa.	
Phoenix, Ariz.	
Pittsburgh, Pa.	
Portland, Maine	"No cases in 15 years."
Portland, Oregon	
Providence, R.I.	
Reno, Nev.	"No cases."
Richmond, Va.	
Rochester, N.Y.	9 suits.
St. Louis, Mo.	
St. Paul, Minn.	"No suits."
Sacramento, Cal.	
Salt Lake City, Utah	"No suits."
San Francisco, Calif.	

Seattle, Wash.	7 suits in last 12 months. ("... slight increase. ...")
Spokane, Wash.	"2 cases in 10 years."
Syracuse, N.Y.	
Tulsa, Okla.	"No suits."
Washington, D.C.	"3 suits," no change in volume.
Wichita, Kan.	"No suits."

• • •

3. The most recent public statement on the subject of search warrants by a ranking Chicago police official is reproduced as an Appendix to this Reply Brief.

Respectfully submitted,

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APPENDIX

CHICAGO DAILY NEWS, Mon., Sept. 19, '60 * 15

Hassle Over Warrants In Cop Gambling Raids

'Handcuffed,' Say Police; At Odds with Prosecutor

BY EDMUND J. BOONEY

A hassle was developing Monday between Chicago police and the state's attorney's office over the use of search warrants for gambling raids.

Lt. William Graham, chief of the police gambling unit, said he isn't going to use search warrants because they "handcuff" law enforcement.

Frank Ferlic, first assistant state's attorney, said that's no way to get gambling convictions.

"Graham is wrong," said Ferlic. "Under law he should get warrants if at all possible. He is not doing his duty when he fails to try to get warrants."

• • •

GRAHAM said, "If we have to proceed by the search warrant, we will be handcuffed in enforcing the gambling laws of Illinois.

"What I want is a warrant for 'probable cause' of gambling. Now, we have to have personal knowledge of a crime in order to get a warrant."

He contended that it is sometimes impossible to get personal information about a gambling place without tipping off the gamblers.

He conceded that warrants are usually necessary for gambling convictions, but declared, "We will get along without them if we have to."

• • •

HE SAID convictions aren't the most important thing anyway.

"The big thing is: We hit the gamblers where it hurts —their pocketbooks. It's not a matter of conviction. When we arrest them, we take their telephones, equipment and, most important, their records.

"We turn over their records to the Internal Revenue Service and it slaps the gamblers with an income tax. And, all the time, we keep them moving out by banging away at them."

• • •

GRAHAM'S squad has come under fire in Municipal court because it has made raids without warrants. Five cases were thrown out last week, Graham said, because the judge ruled the arrests were invasions of privacy.

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